

## Washington State's lawsuit to enforce federal cleanup at Hanford

### **Q: What is the state trying to accomplish with this lawsuit?**

**A:** The Energy Department is obligated under both the Tri-Party Agreement (TPA) and federal and state environmental statutes to empty the nuclear and toxic waste storage tanks and treat the waste from the tanks.

We've asked the federal court to establish and enforce specific deadlines for emptying 142 single-shell tanks and for treating the 53 million gallons of hazardous and radioactive waste in all 177 underground tanks.

- Our bottom line objective is to develop a schedule that requires the Energy Department to comply.
- Unfortunately, the Tri-Party Agreement is no longer effective in this regard.

### **Q: What does the Tri-Party Agreement require?**

**A:** The agreement, as amended, currently requires completing all treatment by the year 2028 and emptying all the single-shell underground tanks by 2018. The Department of Energy admits it won't meet these requirements.

### **Q: How far behind is the federal cleanup at Hanford?**

**A:** Under President Bush's requested budget for 2008, only one tank at Hanford will be emptied next year. At that rate, it would take 140 years to empty the remaining 142 single-shell underground storage tanks and process the highly radioactive and hazardous waste at Hanford. The current deadline for emptying all of the single-shell tanks is 2018.

### **Q: You've been in negotiations for a while. What led the state to sue?**

**A:** We sued because the state needs an enforceable schedule. Over 18 months, we negotiated in good faith. This included personal meetings with Energy Secretary Samuel Bodman.

#### **WHY IT MATTERS**

The federal government has a clear legal and moral obligation to clean up the massive toxic legacy at Hanford from America's nuclear weapons program, which won the Cold War and made the world a safer place.

At this moment, several toxic plumes under Hanford have already contaminated parts of the groundwater aquifer and are moving toward the river. The federal government simply must intercept these plumes – and keep further contamination, such as that from the tanks, from moving through the soil and into the aquifer.

More than a million people live downstream from Hanford in and near 42 communities. In the Oregon counties along the river below Hanford, 32,000 companies depend on clean, safe water to provide 500,000 jobs. In the Washington counties below Hanford, 25,000 companies rely on water to provide 280,000 jobs.

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In our negotiations, we reached tentative agreements on work to be performed – and a schedule. The cleanup schedule that we were prepared to agree to is realistic and technically achievable. It was the federal government's insistence on terms that would have made the agreed upon schedule unenforceable that made settlement impossible.

In our lawsuit, the state seeks a court order that establishes an enforceable schedule.

**Q: What did the feds insist on that would make the cleanup schedule unenforceable?**

**A:** It would not be in the state's interests to share the details of negotiations. It's possible that the parties will decide to return to the table in the future, and we don't want to jeopardize such discussions (if they happen) through detailed statements now. We can tell you that one of the key issues that prevented settlement was that the federal government refused to follow the precedent of prior agreements. Instead, the federal agencies insisted on a budgetary escape hatch that would have given the Energy Department an easy out in the future from the promises it offered now. With these kinds of provisions, the legal settlement on the table wouldn't hold the Energy Department fully accountable for completing the Hanford cleanup.

**Q: Why do you say the Tri-Party Agreement has not been effective?**

**A:** The TPA milestones didn't keep the Energy Department on track with tank retrievals and tank waste treatment. Energy is now so far off track with removing waste from tanks and treating it that the TPA milestones are now unachievable. Energy no longer even looks to the TPA as a compliance baseline. Instead, the agency has developed its own internal project baselines, outside the scope of any legal order, and it is budgeting and requesting appropriations based on that internal baseline.

**Q: Why file a lawsuit now with a new Presidential administration about to be sworn in? Shouldn't you try to negotiate with the new administration first?**

**A:** We're suing the United States for its failure to clean up Hanford. Should the new federal administration express a willingness to agree to reasonable settlement terms including terms that would create an enforceable schedule, the state would be open to discussing a possible settlement of our lawsuit. We're hopeful that once President Elect Obama takes office, his administration will work with us on solutions to the stalled cleanup at Hanford.

Right now, however, this litigation is necessary to protect our state's options for holding the federal government to the commitments it made in the Tri-Party Agreement and for ensuring that the federal government complies with environmental laws. The state plans to vigorously pursue this case in order to obtain court relief as promptly as possible.

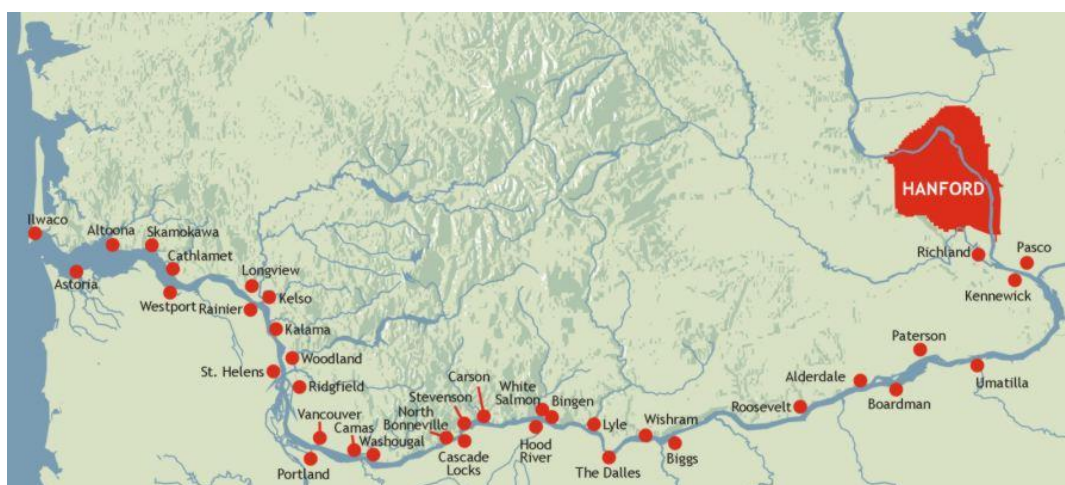
**Q: At a time when state and federal governments are facing declining revenue and will be forced to cut government services, why should this project be funded over others?**

**A:** There's a moral and legal imperative for the federal administration to complete the cleanup. There's also a strong economic imperative to complete the work.

This lawsuit is about the Columbia River – a vital lifeline of our region. It's about the health and safety and economic security of our region.

Federal and state laws require this cleanup, and the federal agencies signed a legally binding agreement in 1989 to complete it on a specific schedule.

Each passing day increases the risk of leakage and catastrophic tank failure at Hanford. Each delay increases the risk to workers, the environment and more than a million people who live and work near the Columbia River downstream from Hanford.



At this moment, several toxic plumes under Hanford have already contaminated parts of the groundwater aquifer and are moving toward the river. The federal government simply must intercept these plumes – and keep further contamination such as that from the tanks from moving through the soil and into the aquifer.

**Q: How are jobs and the economy impacted by the Hanford Cleanup?**

**A:** In 2006 there were 13,000 Hanford jobs with a payroll of more than \$1 billion a year. Reductions due to budget constraints under the Bush administration have left Hanford's work force at about 9,000 people today. Putting people back to work at Hanford not only generates the economic activity that America needs, but it also protects the economic security of our region.

In the Oregon counties along the river below Hanford, 32,000 companies depend on clean, safe water to provide 500,000 jobs with a payroll of \$18 billion. In the Washington counties below Hanford, 25,000 companies rely on water to provide 280,000 jobs and a payroll of \$9.5 billion.

**Q: You announced a lawsuit against the federal government in 1999. Why do you think this lawsuit will lead to a solution?**

**A:** The 1999 litigation achieved our purpose. The circumstances of that suit were remarkably similar to today. The Energy Department had an obligation under Tri-Party Agreement milestones to “interim stabilize” the single-shell tanks (remove liquid wastes to a certain volume). Energy missed the milestones and claimed the work would be too difficult and too expensive to accomplish within a reasonable timeframe. The state informed the Energy Department of its intent to sue in federal court over the missed milestones. The parties subsequently negotiated a consent decree (with court jurisdiction over the settlement), and the Energy Department completed the work.

The current lawsuit asks the federal court to establish and enforce a specific timeline for emptying and treating the 53 million gallons of waste in the tanks. We think our lawsuit will lead to a solution because we are confident a court will grant our requested relief.

**Q: What about the waste that has saturated the soils and the groundwater aquifer?**

**A:** We will also formally request the federal agencies to agree to implement new groundwater and soil cleanup deadlines to avoid further delays in taking essential environmental action. The technical content of our groundwater and soils cleanup request is consistent with what we’ve discussed with the Energy Department and EPA over the past 18 months. We believe this work as well as other Hanford work covered within the TPA can and must proceed while our lawsuit concerning treatment of the tank waste advances through the federal courts.

**Q: You helped negotiate the Tri-Party agreement. Why couldn't you enforce it?**

**A:** Our lawsuit is actually one way of enforcing the Tri-Party Agreement. In fact, our lawsuit asks the court to enforce the requirements of the TPA. Cleaning up Hanford is an incredibly difficult challenge. Smart, dedicated and highly skilled people work hard every day to get the job done.

There has been some progress in cleaning up the mess at Hanford.

The Energy Department has emptied seven tanks, containing millions of gallons of contaminated waste, and that is no small accomplishment. The all-important Waste Treatment Plant construction is 40 percent complete. We have successfully intercepted contaminated plumes of groundwater that previously were flowing into the Columbia.



## Hanford's Waste Treatment Plant Complex - 2008



Project costs exceeding \$12 Billion, WTP design approximately 75% complete and 39% constructed. This one of a kind facility is more than 10 year behind current schedule, not able to treat the 53 million gallons of high-level chemical and radioactive waste until 2019.

**Q: How well has the Hanford Cleanup been managed and funded by the federal government?**

**A:** In Washington State, we have been patient and we have been reasonable. On many occasions, when it became clear that the original cleanup schedule couldn't be met, we have worked with the federal government to modify the schedule.

However, the federal cleanup has been far too slow. And in the past three years, the situation has gotten much worse. Under President Bush, the Hanford cleanup was under-funded and mismanaged. For example, his requested budget for 2009 falls \$600 million short of what the Energy Department says it needs for cleanup at Hanford in 2009. At the current rate, the cleanup would take centuries to complete – if ever. The state of Washington and its citizens will not accept that.

**Q: Why isn't off-site waste addressed by your lawsuit?**

**A:** This new suit is focused on the Energy Department's current non-compliance with the Tri-Party Agreement and underlying hazardous waste laws. Off-site waste is not addressed by the TPA. (Another lawsuit brought by the state in 2003 addressed off-site waste. Under a current settlement of that case, the Energy Department must finalize a pending draft environmental impact statement and issue new Record(s) of Decision before bringing any off-site waste to Hanford. At present, there is not a current Energy Department plan to bring off-site waste to Hanford.)

**Q: What happens to the Tri-Party Agreement now that the lawsuit has been filed?**

**A:** The TPA is a legal document and it remains in effect. In addition to regulating the schedule for tank waste treatment, tank retrieval and groundwater remediation, the TPA also directs other important cleanup work related to waste management and disposal. The TPA is still the cornerstone of the cleanup at Hanford. And, until a court orders a new schedule for tank retrievals and tank waste treatment, all existing TPA milestones remain in effect.

**Q: What happened to the Lifecycle Baseline Report?**

**A:** In October 2007, the negotiators shared the technical package with the public and tribes, and part of the package was a proposed new Lifecycle Baseline Report. The public and tribes enthusiastically supported this new report.

This report would have been produced by the Energy Department and updated annually, and would have included and disclosed the full cost of all projects at Hanford and would have described how the Energy Department would meet all of its deadlines across the lifecycle of all Hanford work.

Until new deadlines for completing waste retrieval and treatment are established, there is little utility in developing a Lifecycle Baseline Report.

**Q: What is the state asking the Energy Department to do about cleaning up the groundwater aquifer and the contaminated soils at Hanford?**

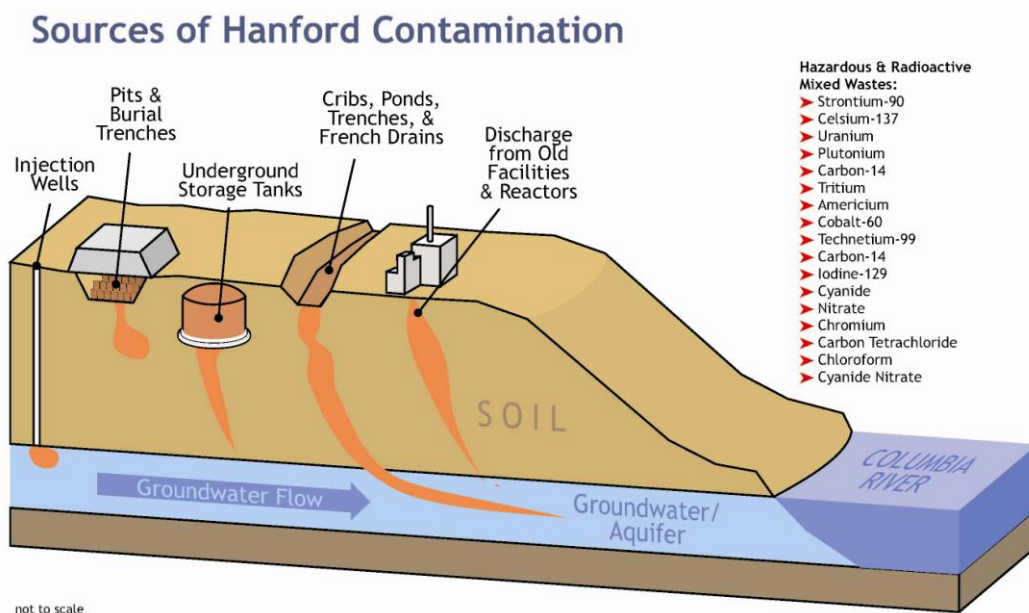
**A:** The state is asking EPA and Energy to implement a new schedule for achieving the groundwater and soil cleanup work (excluding work related to tank farms) by 2024. If the EPA and Energy don't accept these TPA changes, they will follow a dispute resolution process that is part of the TPA. We're requesting that:

- All non tank farm soil and groundwater will be cleaned up by 2024.
- The area beneath the tank farms will be cleaned in the next phase of clean up, after the 177 tanks are emptied of waste.

- There are no surprises in this change package. It is consistent with the information shared by the three parties with the public in August 2007. There was three party and public support for the changes.

**Q: Was groundwater and soil cleanup part of the negotiations over the last couple of years?**

**A:** Groundwater and soil were an important part of the state's negotiations with the Energy Department and EPA. The TPA remains as the most appropriate mechanism to guide the schedule for groundwater and soil cleanup.



**Q: Why isn't the groundwater and soil cleanup part of the lawsuit?**

**A:** Groundwater and soil cleanup at Hanford are subject to both state and federal (Superfund) authority. We have focused our suit on violations of state hazardous waste law and Tri-Party Agreement milestones based on that law. We will continue to rely on the TPA to guide groundwater and soil cleanup at Hanford. The TPA remains the most appropriate mechanism to guide the schedule for groundwater and soil cleanup.